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SUBJECT: AZERBAIJAN: THREE AZERBAIJANI PROSECUTORS TRAINED AT USDOJ
NATIONAL ADVOCACY CENTER SHINE IN THE SPOTLIGHT OF HIGH-PROFILE
AZERI CRIMINAL PROCESS

REF: BAKU 476 (2009)

11. SUMMARY: In April 2009, three Azeri prosecutors went with the DOJ OPDAT Resident Legal Advisor on an INL funded study-tour to the DOJ National Advocacy Center (NAC) Columbia, South Carolina. Under the RLA's supervision, they took an intensive two-week trial advocacy course. Each of these three has since put his training to good use, not only in the Azeri courtroom but also in advancing a western approach to the practice of criminal law in Azerbaijan, including the execution of a USG request for documents in an ongoing federal corruption/fraud investigation. One of the three is now a candidate judge; the second just successfully finished handling the first-ever money laundering trial in Azerbaijan; and the third handled the politically sensitive, outcome preordained, and internationally condemned bloggers case, yet did so with a high degree of professional courtesy and responsibility. To further advance both their and their colleagues' skills, knowledge, and thinking, the RLA continues, with INL funding, to hold an ongoing series of in-country programs on case development, trial advocacy, and professional responsibility. End Summary.

Background; Prosecutors' Capabilities

12. As reported in reftel, the Prosecutor General of Azerbaijan personally requested the DOJ OPDAT Resident Legal Advisor to educate his prosecutors in the adversarial system, especially in how to handle complex prosecutions and how to ethically fulfill his/her professional responsibility obligations. Azeri prosecutors do not have the experience or training to develop and prosecute complex criminal cases in the fields of corruption and financial crime. Few advocates are skilled in the finer complexities of developing the specific theory of a case in courtroom examination and argument. Further, Azeri prosecutors are just now learning how to comply with the mandate of their new ethics code to act towards the court and defendant fairly and responsibly, including the disclosure of exculpatory evidence. Accordingly, the DOJ RLA has, with INL funding, held an ongoing series of in-country programs designed to advance the Azeris' knowledge, skills, and thinking in these subject areas.

13. In April 2009, the RLA took three of the most promising and better English-speaking young Azeri prosecutors to the DOJ National Advocacy Center (NAC) in Columbia, South Carolina, for the two-week trial advocacy course designed for Assistant U.S. Attorneys. This course at the NAC teaches a prosecutor to prepare witnesses for trial, implement trial strategy, effectively question witnesses, argue cogently, think on one's feet, properly conduct one's self in a courtroom, and to do so ethically and responsibly. The three Azeris were well prepared for class every day, engaged in the coursework with enthusiasm, and performed superbly.

¶4. In the intervening months, these three prosecutors have put their training to good use and have lived up to, if not exceeded, expectations. Each of the three has exercised his new skills in the courtroom and passed some of the learned techniques on to their colleagues. But each also has his own particular accomplishment, which in turn has dovetailed with the various DOJ OPDAT programs in Azerbaijan.

The First of the Three Prosecutors

¶5. Anar Rzayev was recently selected as a candidate judge. Until his selection, he worked in the International Relations Division of the Prosecutor General's Office.

¶6. As reported in reftel, the RLA and a trial attorney from DOJ's Office of International Affairs (OIA) held a mutual legal assistance seminar in February 2009. As a direct result of this seminar, Anar Rzayev's office is cooperating with OIA in an assistance request filed recently pursuant to the UN Convention Against Corruption. The DOJ Fraud Division is requesting documents in an ongoing federal investigation into an American oil supply company and its Azeri affiliate. Pursuant to the OIA request, Anar Rzayev's office just obtained and executed a search warrant on the office of the Azeri affiliate and is gathering requested documents from the Azeri Ministry of Taxation. These documents will then be certified and forwarded to DOJ.

¶7. Four years ago, through the collaborative efforts of DOJ, ABA, COE, OSCE, and GTZ, the Azeri judicial selection process was transformed to become transparent and merit-based. With selection now depending upon top performance in oral and written exams, the failure rate of candidates is high. This new judicial selection process is designed to create a new cadre of professional, merit-based judges such as Anar Rzayev. Such judges will be Azerbaijan's only hope towards achieving a qualified and independent judiciary that is equipped to combat corruption, build respect for the rule of law, and support economic and political growth. Two groups of judges had previously gone through this new selection process. The first group consisted of 55 judges appointed in 2007; the second group, 102 judges appointed in 2008.

¶8. Having just passed the selection process, a third group of 80 candidate judges, including Anar Rzayev, is currently undergoing an eight-month training program prior to assuming the bench. Upon completion of four months of academic training, they will then undergo four months of on-the-job training. Thereafter, they will take a final written essay exam, consisting of writing a decision in both a criminal and civil case. Those candidates who pass (at this stage only one candidate, from the first group, has ever failed) will then be formally invested as judges.

¶9. In December 2009, the DOJ RLA held a week-long seminar for this new group of 80 judicial candidates. Two visiting U.S. federal judges and the RLA were the primary instructors. A hypothetical false-document sales and money laundering case provided the backdrop for moot court practical exercises as well as discussions on money laundering, plea bargaining, jury trials, decision making and writing, media freedom, the appellate process, and judicial ethics.

¶10. As part of the seminar, Anar Rzayev related his experience of sitting as a juror (together with volunteer residents of Columbia, SC) in one of the all-day mock trials held at the end of the NAC course. His telling added an extra dimension to the jury trial discussions and left the other 79 candidate judges with a favorable impression of the U.S. jury system. Each expressed the desire one day to preside over a jury trial in Azerbaijan. Current law provides for jury trial in select serious-crimes cases, but to date has never been implemented.

The Second of the Three Prosecutors

¶11. Azar Osmanov, who works in the accusations (trial) section of the Prosecutor General's main office, just finished handling the first-ever money laundering trial in Azerbaijan. On January 8th, the trial judge entered a verdict of guilty as to all counts, including

the money laundering charge, and sentenced the defendant to eight years in prison. The case was referred to trial by the Prosecutor General's Anti-Corruption Task Force, and came about as the result of the RLA's cooperative work with the Task Force.

¶12. In a series of on-site sessions, the RLA used actual U.S. organized crime case models to detail and explain for the Task Force investigators and prosecutors the six-step method to investigate and prosecute complicated cases: use of informants; technical surveillance; undercover operations; financial tracing and net worth analysis; plea bargaining, including immunity and witness protection; and the charging of racketeering and money laundering laws. Further, in July 2009, the RLA and an IRS CID Special Agent, who is the author of a world recognized text book on money laundering investigation, conducted a special course on how to identify and investigate money laundering activity. In particular, they taught the Task Force how to trace and freeze assets.

¶13. The task force recently utilized the RLA's suggestion to combine an undercover sting with a net worth analysis. It successfully made and referred to trial a corruption case against the head of a local school district and two school principals for extorting large sums of money in exchange for passing grades from students.

¶14. After the July course, the task force was inspired to actually refer a money laundering charge to trial. With DOJ assistance, the Azerbaijani Parliament had passed an Anti-Money Laundering/Counter-Terrorist Financing law in February 2009, but no prosecutions had yet been brought under the law. So, when thereafter the task force completed its investigation of a case involving a \$100,000 embezzlement by the chief accountant of a quasi government/private company, the director of the task force forwarded the case to trial with a money laundering charge included. The defendant had deposited \$60,000 of the \$100,000 of embezzled funds into various local accounts established by him under false names, and then transferred portions out of the country. A legal motion to dismiss the money laundering law was filed by defense counsel, but Azar Osmanov successfully parried the defense attacks on the law. This conviction now sets a solid legal precedent for future money laundering cases in Azerbaijan.

The Third of the Three Prosecutors

¶15. Jeyhun Kazimov works in the trial section of the city of Baku Chief Prosecutor's office. He was the trial attorney in the recent hooliganism case of bloggers Emin Milli and Adnan Hajizade.

¶16. As previously reported, the two bloggers were involved in a scuffle at a restaurant during the summer. The issue at criminal trial was whether they were the aggressors or the victims. In a verdict that has garnered much international criticism, the two bloggers were convicted and sentenced to two years in jail on hooliganism charges. The European Parliament called for their immediate release in a resolution critical of what it called the deterioration of media freedom in Azerbaijan. International human rights organizations have called the charges against the two men politically motivated. Both men had been active in groups that are highly critical of the administration of President Ilham Aliyev, including a video circulated by internet in which an activist in a donkey costume conducted a mock press conference. The case is currently on appeal.

¶17. At the NAC, Jeyhun Kazimov was the most polite, enthusiastic, and responsive of the three to all the RLA and other instructor's criticisms and suggestions for improvement. As confirmed with other international observers at the bloggers' trial, despite the hostile atmosphere of the trial setting, Jeyhun Kazimov performed with the same level of politeness and responsiveness. He presented his case-in-chief evidence, namely the restaurant and police witnesses, "as is," without trying to coach them into a smooth story that worked over the otherwise inconsistencies and weaknesses. Each party had its own story as to who started the fight, but nothing more to corroborate or discredit either version. Through defense cross examination, however, it was shown that the eye-witnesses identified by the police really did not see who started the fight. Jeyhun Kazimov conducted his direct and cross-examinations, and made his objections and arguments, with reason and without the usual

histrionics attendant in these types of trials. Also, he acted with professionalism and dignity towards the judge and opposing counsel.

¶18. The RLA recently met with Aziz Seyidov, the Chief Prosecutor for the city of Baku, to discuss the case. Chief Prosecutor Seyidov informed the RLA that as far as he was concerned, this was a low level assault case. The political and media implications were irrelevant to him in his decision in taking the case to trial. He said he simply could not account for the curious pattern of media critics being charged with instigating fights. Rather, he said he based his decision in this case solely on the police report, which directly blamed the bloggers for starting and continuing the fight. His office does not do the investigations in these types of cases; rather, that is done by the Ministry of Interior. If the MOIA report suggests a crime, then his office has no choice but to take the case as presented to trial. He has 24 trial attorneys who cover 11 districts. They rarely have the time or luxury to interview the witnesses prior to the trial hearings, which are intermittent, an hour or two at a time spaced weeks apart. Chief Prosecutor Seyidov said he picked Jeyhun Kazimov to be the trial attorney because "Jeyhun is young, smart, articulate, and well-trained."

¶19. All things being equal, this evidence most likely would not have amounted to the "proof beyond a reasonable doubt" standard required to sustain a criminal verdict in a U.S. courtroom. Although the outcome of the trial was most certainly pre-ordained, that was no reflection upon the prosecutor. Although international observers state that the prosecution witnesses were lying and the defense witnesses were telling the truth, that determination was for the judge, not the prosecutor, to make. Although a jury may have arrived at a different conclusion, the judge, for better or worse, chose to discount the defense witnesses. Regardless, Jeyhun Kazimov did his job by handling as professionally as he could the case that was presented to him by the Ministry of Interior.

¶20. By handling the case as straightforward as he did, Jeyhun Kazimov acted in conformity with the recently implemented Azeri Code of Conduct for Prosecutors. Not only did he receive trial ethics training at the NAC, but he received similar training on the Azeri code from the RLA. As reported in reftel, the RLA and an attorney from DOJ's Office of Professional Responsibility traveled to different prosecutors' offices around the country to familiarize regional Azeri prosecutors with their responsibilities under the Azeri code, illustrate the similarities with the U.S. code, provide examples of professional misconduct in the trial setting, and to advise on procedures for investigating and punishing such allegations of prosecutorial misconduct.

¶21. Unfortunately, the judge in the bloggers case was an older judge who has not attended any of the OPDAT trainings held for the newer judges. Over the past two years in seminars held for the second group of 102 new judges, visiting U.S. federal judges have delivered the message that the freedom of the press should be sacrosanct. Rather than directly criticizing the political repression of the press in Azerbaijan, the U.S. federal judges instead have talked about how the U.S., as a young democracy and even later, made mistakes in this area. But the federal judges drove home the theme that slowly but surely an independent judiciary has to step in to assert that political dissent has to be protected in a democracy in order for the people to be able to assess the quality of their leadership. Even falsehoods in the context of political speech need protection, or else the party in power will decide what the "truth" is and repress what it doesn't like.

¶22. The media was invited to and was present for the media freedom lecture given at the December 2009 seminar described in paragraph nine above. The senior visiting federal judge (Chief U.S. District Judge from New Orleans) further gave a press interview at the seminar room, where she reiterated these same themes of media freedom. Her lecture and interview received wide and favorable media coverage both in print and television/radio.

¶23. Unfortunately, the likelihood of true judicial independence is still remote due to the institutional control of the executive branch over much of the judiciary, including budgeting and review of judges' work product, as well as the systemic problem of judicial corruption. However, the new judges appointed since 2007 appear idealistic. Salaries have improved, and as these younger, merit

based and thus more committed and idealistic judges elevate to high judicial levels, hopefully these institutional vestiges of the Communist era will eventually disappear.

¶24. Comment: The INL Letter of Agreement in par III mandates a yearly evaluation by the GOAJ regarding the DOJ OPDAT program. This end of the year review was just conducted by Fuad Alasgarov, the head of the Azerbaijani Presidential Administration's Department for Work with Law-Enforcement Agencies. Fuad Alasgarov stated that the GOAJ feedback he has gotten, which he endorses, is "the RLA is doing a fantastic job and his program must continue." The Embassy likewise firmly endorses this sentiment. As commented in reftel, the RLA continues to lead meaningful efforts to develop and implement justice sector institutional, criminal procedure, and anti-corruption reform initiatives. Accordingly, the Embassy strongly recommends the continuation of this highly active and useful INL-funded program.

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